



U.S. Department of Justice

United States Attorney  
Southern District of New York

The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007

February 27, 2018

**BY ECF**

The Honorable P. Kevin Castel  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: **United States v. David Bergstein**, 16 Cr. 746 (PKC)

Dear Judge Castel:

The Government respectfully writes to request the following modification and addition to the charge:

1. Counts Four and Five – Elements (Draft Charge, P. 60): Replace the phrase “stock, or shares in a company” in the first element with the word “Security”;<sup>1</sup> and

2. Add the following: “The term ‘security’ is defined in the statute that makes securities fraud a crime. Congress defined the term ‘security’ broadly because its purpose was to regulate investments, in whatever form they are made and by whatever name they are called. The definition of the term security includes “any note, stock, treasury stock, security future, security-based swap, bond, debenture certificate of interest . . . investment contract . . . or in general, any instrument commonly known as a ‘security.’”<sup>2</sup> See *U.S. v. Robert McDonald*, 11 Cr. 19 (JGK) (dkt# 55).

Respectfully submitted,

GEOFFREY S. BERMAN  
United States Attorney

By: \_\_\_\_\_/s/  
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<sup>1</sup> 15 U.S.C. § 78j(b).

<sup>2</sup> 15 U.S.C. § 78c(10).